

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 602

Introduced by Senator Figueroa
(Coauthors: Senators Kuehl and Romero)
(Coauthors: Assembly Members Levine, Pavley, and Reyes)

February 20, 2003

An act to amend Sections 1785.11, 1785.11.1, ~~1798.84, and 1798.93~~ of, ~~to add Sections 1798.955 and~~ and 1785.11.2 of, to add Section 1799.1b to, to add Title 1.81.2 (commencing with Section 1798.90.1) to Part 4 of Division 3 to, the Civil Code, and to amend Section 530.8 of the Penal Code to amend Sections 530.5, 530.6, 530.8, and 1191.10 of the Penal Code, and to amend Section 2891 of the Public Utilities Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 602, as amended, Figueroa. Personal information.

(1) The Consumer Credit Reporting Agencies Act specifies when a consumer credit reporting agency may furnish a consumer credit report.

This bill would require a ~~business that~~ *person who* requests a consumer credit report from a consumer credit reporting agency *for credit, court-ordered support, or business purposes* to provide specified information about the consumer *to the credit reporting agency*.

(2) The Consumer Credit Reporting Agencies Act permits a consumer to place a security alert in his or credit report by making a request in writing or by telephone to a consumer credit reporting agency.

This bill would provide for ~~an unspecified~~ *a penalty in an amount up to \$5,000 and reasonable attorneys' fees* for a failure of a consumer credit reporting agency to place this security alert. *The bill would also*

require a consumer credit reporting agency to provide additional notice to the consumer regarding the expiration date of that security alert, as specified.

~~(3) Existing law requires any person or business that conducts business in the state to safeguard customer records, maintain a system of destruction of those records, and make a disclosure if the records are breached, as specified~~ *permits a consumer credit reporting agency to charge a reasonable fee to any consumer who elects to, among other things, freeze his or her credit report, with a specified exception.*

~~This bill would permit, upon a violation of these provisions, a recovery amount of not more than \$100,000 for each violation, in addition to any other remedy at law~~ *limit this charge to no more than a one-time fee of \$10.*

~~(4) Existing law permits a business to use information data encoded on a driver's license for verification purposes only.~~

~~This bill would prohibit the retention or further use of this information for marketing purposes or for usage in an electronic device that reads the personal information, except as otherwise authorized by law.~~ The bill would make a violation of these provisions a crime, thereby imposing a state-mandated local program.

~~(5) Existing law permits a person to bring an action against a claimant to establish that the person is a victim of identity theft and not liable for the claimant's action.~~

~~This bill would permit the admissibility of victim impact statements to establish noneconomic damages. The bill would also require the court to keep that person informed of specified information about the action.~~

~~(5) Existing law prohibits business entities, as defined, from making specified disclosures in relation to individual records.~~

~~This bill would require a business entity that provides credit, installment, or telephone accounts, that receives a change of address request from any individual who has an existing account with that entity, to send specified change of address notices.~~

~~(6) Existing law provides that every person who willfully obtains personal identifying information about another person, as defined, and uses that information for any unlawful purpose is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000, or both, or by imprisonment in the state prison, or a fine not to exceed \$10,000, or both.~~

This bill would enhance the terms of imprisonment for those persons, if specified circumstances exist.

By expanding the scope of an existing crime, this bill imposes a state-mandated local program.

(7) Existing law provides a procedure to initiate an investigation of potential identity theft.

This bill would make a clarification within this provision.

(8) Existing law permits a person who discovers that he or she may be a victim of identity theft to request specified reports.

~~Existing law~~

This bill would permit a cause of action for a failure of a person or entity to provide these reports, and would provide for penalties and reasonable attorneys' fees, as specified. ~~The bill would also make specified statements of intent.~~

~~(7)~~

(9) Existing law requires the court to permit and consider the statements of victims during the sentencing phase of specified proceedings.

This bill would require the court to permit and consider the statements of identity theft victims when sentencing the person who committed the identity theft, as applicable.

(10) Existing law prohibits telephone companies from making available specified information, without consent.

This bill would exempt therefrom certain information needed to pursue an identity theft investigation.

(11) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Identity Theft Victims' Bill of Rights Prevention and Assistance
3 Act.

1 ~~SEC. 2.—It is the intent of the Legislature to enact legislation~~
2 ~~in the 2003–04 Regular Session that would strengthen the laws in~~
3 ~~relation to identity theft, privacy rights, and consumer credit~~
4 ~~reporting. This legislation shall include, but not be limited to, all~~
5 ~~of the following:~~

6 ~~(a) Enhancing sentences for repeat offenders of identity theft.~~

7 ~~(b) Allowing for the aggregation of damages in any complaint~~
8 ~~against perpetrators in identity theft cases, so those criminal~~
9 ~~penalties can be appropriately linked to the sum total of economic~~
10 ~~losses from multiple crimes or victims.~~

11 ~~(c) Making criminal sentences for identity theft equal to or~~
12 ~~greater than those of other similar offenses, such as theft or~~
13 ~~forgery.~~

14 ~~(d) Broadening the definition of venue for law enforcement~~
15 ~~actions to include a location of convenience to the victim.~~

16 ~~(e) Limiting the cost of security freezes for individuals seeking~~
17 ~~to freeze their credit report as a preventative measure.~~

18 ~~SEC. 3.~~

19 ~~SEC. 2.~~ Section 1785.11 of the Civil Code is amended to read:
20 1785.11. (a) A consumer credit reporting agency shall
21 furnish a consumer credit report only under the following
22 circumstances:

23 (1) In response to the order of a court having jurisdiction to
24 issue an order.

25 (2) In accordance with the written instructions of the consumer
26 to whom it relates.

27 (3) To a person whom it has reason to believe is doing any of
28 the following:

29 (A) Intends to use the information in connection with a credit
30 transaction, or entering or enforcing an order of a court of
31 competent jurisdiction for support, involving the consumer as to
32 whom the information is to be furnished and involving the
33 extension of credit to, or review or collection of an account of, the
34 consumer, *and the person requesting that report matches, with a*
35 *reasonable degree of certainty, at least four categories of*
36 *identifying information within the file maintained by the consumer*
37 *credit reporting agency on the consumer. The categories of*
38 *identifying information shall include four of the following:*

39 (i) *First and last name.*

40 (ii) *Month and date of birth.*

1 (iii) *Driver's license number.*

2 (iv) *Place of employment.*

3 (v) *Current residence address.*

4 (vi) *Previous residence address.*

5 (vii) *Social security number.*

6 (B) Intends to use the information for employment purposes.

7 (C) Intends to use the information in connection with the
8 underwriting of insurance involving the consumer, or for
9 insurance claims settlements.

10 (D) Intends to use the information in connection with a
11 determination of the consumer's eligibility for a license or other
12 benefit granted by a governmental instrumentality required by law
13 to consider the applicant's financial responsibility or status.

14 (E) Intends to use the information in connection with the hiring
15 of a dwelling unit, as defined in subdivision (c) of Section 1940.

16 (F) Otherwise has a legitimate business need for the
17 information in connection with a business transaction involving
18 the consumer, and the person requesting that report ~~for the~~
19 ~~business provides the consumer's full name, address, date of birth,~~
20 ~~and social security number.~~ *matches, with a reasonable degree of*
21 *certainty, at least four categories of identifying information within*
22 *the file maintained by the consumer credit reporting agency on the*
23 *consumer. The categories of identifying information shall include*
24 *four of the following:*

25 (i) *First and last name.*

26 (ii) *Month and date of birth.*

27 (iii) *Driver's license number.*

28 (iv) *Place of employment.*

29 (v) *Current residence address.*

30 (vi) *Previous residence address.*

31 (vii) *Social security number.*

32 (b) A consumer credit reporting agency may furnish
33 information for purposes of a credit transaction specified in
34 subparagraph (A) of paragraph (3) of subdivision (a), where it is
35 a credit transaction that is not initiated by the consumer, only under
36 the circumstances specified in paragraph (1) or (2), as follows:

37 (1) The consumer authorizes the consumer credit reporting
38 agency to furnish the consumer credit report to the person.

39 (2) The proposed transaction involves a firm offer of credit to
40 the consumer, the consumer credit reporting agency has complied

1 with subdivision (d), and the consumer has not elected pursuant to
2 paragraph (1) of subdivision (d) to have the consumer's name
3 excluded from lists of names provided by the consumer credit
4 reporting agency for purposes of reporting in connection with the
5 potential issuance of firm offers of credit. A consumer credit
6 reporting agency may provide only the following information
7 pursuant to this paragraph:

8 (A) The name and address of the consumer.

9 (B) Information pertaining to a consumer that is not identified
10 or identifiable with a particular consumer.

11 (c) Except as provided in paragraph (3) of subdivision (a) of
12 Section 1785.15, a consumer credit reporting agency shall not
13 furnish to any person a record of inquiries solely resulting from
14 credit transactions that are not initiated by the consumer.

15 (d) (1) A consumer may elect to have his or her name and
16 address excluded from any list provided by a consumer credit
17 reporting agency pursuant to paragraph (2) of subdivision (b) by
18 notifying the consumer credit reporting agency, by telephone or in
19 writing, through the notification system maintained by the
20 consumer credit reporting agency pursuant to subdivision (e), that
21 the consumer does not consent to any use of consumer credit
22 reports relating to the consumer in connection with any transaction
23 that is not initiated by the consumer.

24 (2) An election of a consumer under paragraph (1) shall be
25 effective with respect to a consumer credit reporting agency, and
26 any affiliate of the consumer credit reporting agency, on the date
27 on which the consumer notifies the consumer credit reporting
28 agency.

29 (3) An election of a consumer under paragraph (1) shall
30 terminate and be of no force or effect following notice from the
31 consumer to the consumer credit reporting agency, through the
32 system established pursuant to subdivision (e), that the election is
33 no longer effective.

34 (e) Each consumer credit reporting agency that furnishes a
35 prequalifying report pursuant to subdivision (b) in connection
36 with a credit transaction not initiated by the consumer shall
37 establish and maintain a notification system, including a toll-free
38 telephone number, that permits any consumer, with appropriate
39 identification and for which the consumer credit reporting agency
40 has a file, to notify the consumer credit reporting agency of the

consumer's election to have the consumer's name removed from any list of names and addresses provided by the consumer credit reporting agency, and by any affiliated consumer credit reporting agency, pursuant to paragraph (2) of subdivision (b). Compliance with the requirements of this subdivision by a consumer credit reporting agency shall constitute compliance with those requirements by any affiliate of that consumer credit reporting agency.

(f) Each consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis shall establish and maintain a notification system under paragraph (1) of subdivision (e) jointly with its affiliated consumer credit reporting agencies.

~~SEC. 4.~~

SEC. 3. Section 1785.11.1 of the Civil Code is amended to read:

1785.11.1. (a) A consumer may elect to place a security alert in his or her credit report by making a request in writing or by telephone to a consumer credit reporting agency. "Security alert" means a notice placed in a consumer's credit report, at the request of the consumer, that notifies a recipient of the credit report that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods or services in the consumer's name.

(b) A consumer credit reporting agency shall notify each person requesting consumer credit information with respect to a consumer of the existence of a security alert in the credit report of that consumer *and the date of expiration of that security alert*, regardless of whether a full credit report, credit score, or summary report is requested. *If that request was made by telephone, notice of the date of expiration of the security alert shall be made during that telephone communication. If that request was made by mail, notice of the date of expiration of the security alert shall be made by a written disclosure within 10 business days of the request and printed in a clear and conspicuous manner.*

(c) Each consumer credit reporting agency shall maintain a toll-free telephone number to accept security alert requests from consumers 24 hours a day, seven days a week.

(d) The toll-free telephone number shall be included in any written disclosure by a consumer credit reporting agency to any

1 consumer pursuant to Section 1785.15 and shall be printed in a
2 clear and conspicuous manner.

3 (e) A consumer credit reporting agency shall place a security
4 alert on a consumer's credit report no later than five business days
5 after receiving a request from the consumer.

6 (f) The security alert shall remain in place for at least 90 days,
7 and a consumer shall have the right to request a renewal of the
8 security alert.

9 (g) Notwithstanding Section 1785.19, any consumer credit
10 reporting agency that fails to place a security alert pursuant to this
11 section shall be liable for a penalty in an amount of up to ~~=====~~
12 ~~(\$=====) five thousand dollars (\$5,000) and reasonable attorneys'~~
13 ~~fees.~~

14 ~~SEC. 5.—Section 1798.84 of the Civil Code is amended to read:~~
15 ~~1798.84.—(a) (1) Any customer injured by a violation of this~~
16 ~~title may institute a civil action to recover damages.~~

17 ~~(2) In any suit brought pursuant to paragraph (1), any person or~~
18 ~~business that has violated Section 1798.82 shall be liable to the~~
19 ~~consumer for a civil penalty in an amount not more than one~~
20 ~~hundred thousand dollars (\$100,000) for each violation, in~~
21 ~~addition to any other remedy at law.~~

22 ~~(b) Any business that violates, proposes to violate, or has~~
23 ~~violated this title may be enjoined.~~

24 ~~(c) The rights and remedies available under this section are~~
25 ~~cumulative to each other and to any other rights and remedies~~
26 ~~available under law.~~

27 ~~SEC. 6.—~~

28 ~~SEC. 4. Section 1785.11.2 of the Civil Code is amended to~~
29 ~~read:~~

30 1785.11.2. (a) A consumer may elect to place a security
31 freeze on his or her credit report by making a request in writing by
32 certified mail to a consumer credit reporting agency. "Security
33 freeze" means a notice placed in a consumer's credit report, at the
34 request of the consumer and subject to certain exceptions, that
35 prohibits the consumer credit reporting agency from releasing the
36 consumer's credit report or any information from it without the
37 express authorization of the consumer. If a security freeze is in
38 place, information from a consumer's credit report may not be
39 released to a third party without prior express authorization from
40 the consumer. This subdivision does not prevent a consumer credit

1 reporting agency from advising a third party that a security freeze
2 is in effect with respect to the consumer's credit report.

3 (b) A consumer credit reporting agency shall place a security
4 freeze on a consumer's credit report no later than five business
5 days after receiving a written request from the consumer.

6 (c) The consumer credit reporting agency shall send a written
7 confirmation of the security freeze to the consumer within 10
8 business days and shall provide the consumer with a unique
9 personal identification number or password to be used by the
10 consumer when providing authorization for the release of his or
11 her credit for a specific party or period of time.

12 (d) If the consumer wishes to allow his or her credit report to
13 be accessed for a specific party or period of time while a freeze is
14 in place, he or she shall contact the consumer credit reporting
15 agency, request that the freeze be temporarily lifted, and provide
16 the following:

17 (1) Proper identification, as defined in subdivision (c) of
18 Section 1785.15.

19 (2) The unique personal identification number or password
20 provided by the credit reporting agency pursuant to subdivision
21 (c).

22 (3) The proper information regarding the third party who is to
23 receive the credit report or the time period for which the report
24 shall be available to users of the credit report.

25 (e) A consumer credit reporting agency that receives a request
26 from a consumer to temporarily lift a freeze on a credit report
27 pursuant to subdivision (d), shall comply with the request no later
28 than three business days after receiving the request.

29 (f) A consumer credit reporting agency may develop
30 procedures involving the use of telephone, fax, the Internet, or
31 other electronic media to receive and process a request from a
32 consumer to temporarily lift a freeze on a credit report pursuant to
33 subdivision (d) in an expedited manner.

34 (g) A consumer credit reporting agency shall remove or
35 temporarily lift a freeze placed on a consumer's credit report only
36 in the following cases:

37 (1) Upon consumer request, pursuant to subdivision (d) or (j).

38 (2) If the consumer's credit report was frozen due to a material
39 misrepresentation of fact by the consumer. If a consumer credit
40 reporting agency intends to remove a freeze upon a consumer's

1 credit report pursuant to this paragraph, the consumer credit
2 reporting agency shall notify the consumer in writing prior to
3 removing the freeze on the consumer's credit report.

4 (h) If a third party requests access to a consumer credit report
5 on which a security freeze is in effect, and this request is in
6 connection with an application for credit or any other use, and the
7 consumer does not allow his or her credit report to be accessed for
8 that specific party or period of time, the third party may treat the
9 application as incomplete.

10 (i) If a consumer requests a security freeze, the consumer credit
11 reporting agency shall disclose the process of placing and
12 temporarily lifting a freeze, and the process for allowing access to
13 information from the consumer's credit report for a specific party
14 or period of time while the freeze is in place.

15 (j) A security freeze shall remain in place until the consumer
16 requests that the security freeze be removed. A consumer credit
17 reporting agency shall remove a security freeze within three
18 business days of receiving a request for removal from the
19 consumer, who provides both of the following:

20 (1) Proper identification, as defined in subdivision (c) of
21 Section 1785.15.

22 (2) The unique personal identification number or password
23 provided by the credit reporting agency pursuant to subdivision
24 (c).

25 (k) A consumer credit reporting agency shall require proper
26 identification, as defined in subdivision (c) of Section 1785.15, of
27 the person making a request to place or remove a security freeze.

28 (l) The provisions of this section do not apply to the use of a
29 consumer credit report by any of the following:

30 (1) A person or entity, or a subsidiary, affiliate, or agent of that
31 person or entity, or an assignee of a financial obligation owing by
32 the consumer to that person or entity, or a prospective assignee of
33 a financial obligation owing by the consumer to that person or
34 entity in conjunction with the proposed purchase of the financial
35 obligation, with which the consumer has or had prior to
36 assignment an account or contract, including a demand deposit
37 account, or to whom the consumer issued a negotiable instrument,
38 for the purposes of reviewing the account or collecting the
39 financial obligation owing for the account, contract, or negotiable
40 instrument. For purposes of this paragraph, "reviewing the

1 account” includes activities related to account maintenance,
2 monitoring, credit line increases, and account upgrades and
3 enhancements.

4 (2) A subsidiary, affiliate, agent, assignee, or prospective
5 assignee of a person to whom access has been granted under
6 subdivision (d) of Section 1785.11.2 for purposes of facilitating
7 the extension of credit or other permissible use.

8 (3) Any state or local agency, law enforcement agency, trial
9 court, or private collection agency acting pursuant to a court order,
10 warrant, or subpoena.

11 (4) A child support agency acting pursuant to Chapter 2 of
12 Division 17 of the Family Code or Title IV-D of the Social Security
13 Act (42 U.S.C. et seq.).

14 (5) The State Department of Health Services or its agents or
15 assigns acting to investigate Medi-Cal fraud.

16 (6) The Franchise Tax Board or its agents or assigns acting to
17 investigate or collect delinquent taxes or unpaid court orders or to
18 fulfill any of its other statutory responsibilities.

19 (7) The use of credit information for the purposes of
20 prescreening as provided for by the federal Fair Credit Reporting
21 Act.

22 (8) Any person or entity administering a credit file monitoring
23 subscription service to which the consumer has subscribed.

24 (9) Any person or entity for the purpose of providing a
25 consumer with a copy of his or her credit report upon the
26 consumer’s request.

27 (m) This act does not prevent a consumer credit reporting
28 agency from charging ~~a reasonable~~ *no more than a one-time fee of*
29 *ten dollars (\$10)* to a consumer who elects to freeze, remove the
30 freeze, or temporarily lift the freeze regarding access to a
31 consumer credit report, except that a consumer credit reporting
32 agency may not charge a fee to a victim of identity theft who has
33 submitted a valid police report or valid Department of Motor
34 Vehicles investigative report that alleges a violation of Section
35 530.5 of the Penal Code.

36 SEC. 5. Title 1.81.2 (commencing with Section 1798.90.1) is
37 added to Part 4 of Division 3 of the Civil Code, to read:
38

1 TITLE 1.81.2. CONFIDENTIALITY OF DRIVER'S
2 LICENSE INFORMATION

3
4 ~~1798.90.1. (a) No business that uses the information data~~
5 ~~encoded upon a state driver's license, as defined in Section 310 of~~
6 ~~the Vehicle Code, or identification card issued pursuant to Section~~
7 ~~13000 of the Vehicle Code or any similar provision of law, in order~~
8 ~~to verify a person's identity or personal information for purposes~~
9 ~~of conducting business with that person may, by electronic means~~
10 ~~or otherwise, record, store, or retain that information, or use that~~
11 ~~information for marketing purposes.~~

12 ~~(b) No business may require that a person's state driver's~~
13 ~~license or identification card be used in an electronic device that~~
14 ~~reads the personal information encoded within.~~

15 ~~(c) As used in this section, "business" means a proprietorship,~~
16 ~~partnership, corporation, or any other form of commercial~~
17 ~~enterprise.~~

18 ~~(d) A violation of this section constitutes a misdemeanor~~
19 ~~punishable by imprisonment in a county jail for no more than one~~
20 ~~year, or by a fine of no more than ten thousand dollars (\$10,000),~~
21 ~~or by both.~~

22 ~~SEC. 7. Section 1798.93 of the Civil Code is amended to read:~~

23 ~~1798.93. (a) A person may bring an action against a claimant~~
24 ~~to establish that the person is a victim of identity theft in~~
25 ~~connection with the claimant's claim against that person. If the~~
26 ~~claimant has brought an action to recover on its claim against the~~
27 ~~person, the person may file a cross-complaint to establish that the~~
28 ~~person is a victim of identity theft in connection with the~~
29 ~~claimant's claim.~~

30 ~~(b) (1) A person shall establish that he or she is a victim of~~
31 ~~identity theft by a preponderance of the evidence.~~

32 ~~(2) Victim impact statements are admissible to establish~~
33 ~~noneconomic damages.~~

34 ~~(c) A person who proves that he or she is a victim of identity~~
35 ~~theft, as defined in Section 530.5 of the Penal Code, as to a~~
36 ~~particular claim, shall be entitled to a judgment providing all of the~~
37 ~~following, as appropriate:~~

38 ~~(1) A declaration that he or she is not obligated to the claimant~~
39 ~~on that claim.~~

1 ~~(2) A declaration that any security interest or other interest the~~
2 ~~claimant had purportedly obtained in the victim's property in~~
3 ~~connection with that claim is void and unenforceable.~~

4 ~~(3) An injunction restraining the claimant from collecting or~~
5 ~~attempting to collect from the victim on that claim, from enforcing~~
6 ~~or attempting to enforce any security interest or other interest in~~
7 ~~the victim's property in connection with that claim, or from~~
8 ~~enforcing or executing on any judgment against the victim on that~~
9 ~~claim.~~

10 ~~(4) If the victim has filed a cross-complaint against the~~
11 ~~claimant, the dismissal of any cause of action in the complaint filed~~
12 ~~by the claimant based on a claim which arose as a result of the~~
13 ~~identity theft.~~

14 ~~(5) Actual damages, attorney's fees, and costs, and any~~
15 ~~equitable relief that the court deems appropriate. In order to~~
16 ~~recover actual damages or attorney's fees in an action or~~
17 ~~cross-complaint filed by a person alleging that he or she is a victim~~
18 ~~of identity theft, the person shall show that he or she provided~~
19 ~~written notice to the claimant that a situation of identity theft might~~
20 ~~exist, including, upon written request of the claimant, a valid copy~~
21 ~~of the police report or the Department of Motor Vehicles~~
22 ~~investigative report promptly filed pursuant to Section 530.5 of the~~
23 ~~Penal Code at least 30 days prior to his or her filing of the action,~~
24 ~~or within his or her cross-complaint pursuant to this section.~~

25 ~~(6) A civil penalty, in addition to any other damages, of up to~~
26 ~~thirty thousand dollars (\$30,000) if the victim establishes by clear~~
27 ~~and convincing evidence all of the following:~~

28 ~~(A) That at least 30 days prior to filing an action or within the~~
29 ~~cross-complaint pursuant to this section, he or she provided~~
30 ~~written notice to the claimant at the address designated by the~~
31 ~~claimant for complaints related to credit reporting issues that a~~
32 ~~situation of identity theft might exist and explaining the basis for~~
33 ~~that belief.~~

34 ~~(B) That the claimant failed to diligently investigate the~~
35 ~~victim's notification of a possible identity theft.~~

36 ~~(C) That the claimant continued to pursue its claim against the~~
37 ~~victim after the claimant was presented with facts that were later~~
38 ~~held to entitle the victim to a judgment pursuant to this section.~~

39 ~~SEC. 8.—Section 1798.955 is added to the Civil Code, to read:~~

~~1798.955. In any action brought pursuant to this title, the court shall keep the person bringing the action informed of all of the following:~~

~~(a) The status of the claim.~~

~~(b) The location, date, time, and nature of the court proceeding.~~

~~SEC. 9.~~

1798.90.1. (a) Any business may swipe a driver's license in any electronic device for purposes of verification of age and authentication of the driver's license, but may not retain or further use that information for any other purpose, except where otherwise authorized by law and only to the extent authorized by law.

(b) As used in this section, "business" means a proprietorship, partnership, corporation, or any other form of commercial enterprise.

(c) A violation of this section constitutes a misdemeanor punishable by imprisonment in a county jail for no more than one year, or by a fine of no more than ten thousand dollars (\$10,000), or by both.

SEC. 6. Section 1799.1b is added to the Civil Code, to read:

1799.1b. Any business entity that provides credit, installment, or telephone accounts that receives a change of address request from any individual that has an existing credit, installment, or telephone account with that entity shall send within 30 days of receipt of that request a change of address notification to the previous address of record and to the new address.

~~SEC. 10.~~

SEC. 7. Section 530.5 of the Penal Code is amended to read:

530.5. (a) Every person who willfully obtains personal identifying information, as defined in subdivision (b) (c), of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, or medical information in the name of the other person without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished either by imprisonment in a county jail not to exceed one year, a fine not to exceed one thousand dollars (\$1,000), or both that imprisonment and fine, or by imprisonment in the state prison, a fine not to exceed ten thousand dollars (\$10,000), or both that imprisonment and fine.

(b) *“Electronic communication” means the transmission of personal identifying information as part of any e-commerce transaction, including, but not limited to, transactions over the internet, electronic funds transfers, or Web site purchases.*

(c) ~~“Personal identifying information,” as used in this section,~~ *information” means the name, address, telephone number, health insurance identification number, taxpayer identification number, school identification number, state or federal driver’s license number, or identification number, social security number, place of employment, employee identification number, mother’s maiden name, demand deposit account number, savings account number, checking account number, PIN (personal identification number) or password, alien registration number, government passport number, date of birth, unique biometric data including fingerprint, facial scan identifiers, voice print, retina or iris image, or other unique physical representation, unique electronic data including identification number, address, or routing code, telecommunication identifying information or access device, information contained in a birth or death certificate, or credit card number of an individual person.*

~~(e)~~

(d) *“Taking or loss” means the amount of credit issued, surety granted, money taken, or goods received at the full value of the item as sold or purchased, irrespective of whether the defendant actually obtained the goods or was able to use the credit. The value of the taking or loss is complete on the issuance of the credit granting of the surety, or the provision or shipment of the order.*

(e) *“Victim” means the person whose personal identifying information was used in the crime, or the corporation, merchant business, or individual who issued the credit, goods, or services to the defendant who is using the personal identifying information of another.*

(f) *In any case in which a person willfully obtains personal identifying information of another person, uses that information to commit a crime in addition to a violation of subdivision (a), and is convicted of that crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.*

~~(d)~~

(g) Every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined in subdivision ~~(b)~~ (c), of another person is guilty of a public offense, and upon conviction therefor, shall be punished by imprisonment in a county jail not to exceed one year, or a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine.

(h) (1) *If the taking or loss described in subdivision (a) exceeds fifty thousand dollars (\$50,000), the crime involves five or more victims, or the crime was committed via electronic communication, the court shall add an additional one year to the defendant's sentence.*

(2) *If the taking or loss described in subdivision (a) exceeds one hundred fifty thousand dollars (\$150,000), or the crime involves 10 or more victims, the court shall add an additional two years to the defendant's sentence.*

(3) *If the taking or loss described in subdivision (a) exceeds five hundred thousand dollars (\$500,000), or the crime involves 20 or more victims, the court shall add an additional penalty of two to four years to the defendant's sentence.*

(4) *If the taking or loss described in subdivision (a) exceeds one million dollars (\$1,000,000), or the crime involves 25 or more victims, the court shall add an additional penalty of three to six years to the defendant's sentence.*

(i) *Any term of punishment described in subdivision (h) may run consecutively with any additional term of punishment imposed by Section 186.11.*

SEC. 8. *Section 530.6 of the Penal Code is amended to read:*

530.6. (a) A person who has learned or reasonably suspects that his or her personal identifying information has been unlawfully used by another, as described in subdivision (a) of Section 530.5, may initiate a law enforcement investigation by contacting the local law enforcement agency that has jurisdiction over his or her actual residence, which shall take a police report of the matter, provide the complainant with a copy of that report, and begin an investigation of the facts ~~or, if~~. *If the suspected crime was committed in a different jurisdiction, the local law enforcement agency may refer the matter to the law enforcement agency where the suspected crime was committed for ~~an~~ further investigation of the facts.*

(b) A person who reasonably believes that he or she is the victim of identity theft may petition a court, or the court, on its own motion or upon application of the prosecuting attorney, may move, for an expedited judicial determination of his or her factual innocence, where the perpetrator of the identity theft was arrested for, cited for, or convicted of a crime under the victim's identity, or where a criminal complaint has been filed against the perpetrator in the victim's name, or where the victim's identity has been mistakenly associated with a record of criminal conviction. Any judicial determination of factual innocence made pursuant to this section may be heard and determined upon declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be part of the record by the court. Where the court determines that the petition or motion is meritorious and that there is no reasonable cause to believe that the victim committed the offense for which the perpetrator of the identity theft was arrested, cited, convicted, or subject to a criminal complaint in the victim's name, or that the victim's identity has been mistakenly associated with a record of criminal conviction, the court shall find the victim factually innocent of that offense. If the victim is found factually innocent, the court shall issue an order certifying this determination.

(c) After a court has issued a determination of factual innocence pursuant to this section, the court may order the name and associated personal identifying information contained in court records, files, and indexes accessible by the public deleted, sealed, or labeled to show that the data is impersonated and does not reflect the defendant's identity.

(d) A court that has issued a determination of factual innocence pursuant to this section may at any time vacate that determination if the petition, or any information submitted in support of the petition, is found to contain any material misrepresentation or fraud.

(e) The Judicial Council of California shall develop a form for use in issuing an order pursuant to this section.

SEC. 9. Section 530.8 of the Penal Code is amended to read:

530.8. (a) If a person discovers that an application in his or her name for a loan, credit line or account, credit card, charge card, public utility service, or commercial mobile radio service has been filed with any person or entity by an unauthorized person, or that

1 an account in his or her name has been opened with a bank, trust
2 company, savings association, credit union, public utility, or
3 commercial mobile radio service provider by an unauthorized
4 person, then, upon presenting to the person or entity with which
5 the application was filed or the account was opened a copy of a
6 police report prepared pursuant to Section 530.6 and identifying
7 information in the categories of information that the unauthorized
8 person used to complete the application or to open the account, the
9 person, or a law enforcement officer specified by the person, shall
10 be entitled to receive information related to the application or
11 account, including a copy of the unauthorized person's application
12 or application information and a record of transactions or charges
13 associated with the application or account. Upon request by the
14 person in whose name the application was filed or in whose name
15 the account was opened, the person or entity with which the
16 application was filed shall inform him or her of the categories of
17 identifying information that the unauthorized person used to
18 complete the application or to open the account. The person or
19 entity with which the application was filed or the account was
20 opened shall provide copies of all forms and information required
21 by this section, without charge, within 10 business days of receipt
22 of the person's request and submission of the required copy of the
23 police report and identifying information.

24 (b) Any request made pursuant to subdivision (a) to a person or
25 entity subject to the provisions of Section 2891 of the Public
26 Utilities Code shall be in writing and the requesting person shall
27 be deemed to be the subscriber for purposes of that section.

28 (c) (1) Before a person or entity provides copies to a law
29 enforcement officer pursuant to subdivision (a), the person or
30 entity may require the requesting person to submit a signed and
31 dated statement by which the requesting person does all of the
32 following:

33 (A) Authorizes disclosure for a stated period.

34 (B) Specifies the name of the agency or department to which
35 the disclosure is authorized.

36 (C) Identifies the types of records that the requesting person
37 authorizes to be disclosed.

38 (2) The person or entity shall include in the statement to be
39 signed by the requesting person a notice that the requesting person
40 has the right at any time to revoke the authorization.

(d) (1) A failure to produce records pursuant to subdivision (a) shall be addressed by the court in the jurisdiction that the victim resides in and where the request for information was issued from. Following a hearing, the court may consider a failure to produce the records as contempt of court and for unlawfully interfering with the court's process and proceedings. The court shall hear and decide that motion no later than 10 court days after the motion is filed.

(2) In addition to any other civil remedy available, the victim may bring a civil action against the entity for compensatory damages and injunctive relief or other equitable relief. Compensatory damages shall be set at an amount that is the greater of the following:

(A) Five thousand dollars (\$5,000), *plus reasonable attorneys' fees.*

(B) Three times the amount of actual damages, if any, sustained by the victim due to a failure to produce the requested information, plus reasonable attorneys' fees.

(e) As used in this section, "*application*" includes the addition of authorized users to an existing account or any other changes made to an existing account.

(f) As used in this section, "law enforcement officer" means a peace officer as defined by Section 830.1 of the Penal Code.

~~(f)~~

(g) As used in this section, "commercial mobile radio service" means "commercial mobile radio service" as defined in section 20.3 of Title 47 of the Code of Federal Regulations.

~~SEC. 11.~~

SEC. 10. Section 1191.10 of the Penal Code is amended to read:

1191.10. The definition of the term "victim" as used in Section 1191.1 includes any insurer or employer who was the victim of workers' compensation fraud for the crimes specified in Section 549 of this code, Sections 2314 and 6152 of the Business and Professions Code, Sections 1871.4, 11760, and 11880 of the Insurance Code, and Section 3215 of the Labor Code, *and any victim of identity theft pursuant to Section 530.5.*

SEC. 11. Section 2891 of the Public Utilities Code is amended to read:

1 2891. (a) No telephone or telegraph corporation shall make
2 available to any other person or corporation, without first
3 obtaining the residential subscriber's consent, in writing, any of
4 the following information:

5 (1) The subscriber's personal calling patterns, including any
6 listing of the telephone or other access numbers called by the
7 subscriber, but excluding the identification to the person called of
8 the person calling and the telephone number from which the call
9 was placed, subject to the restrictions in Section 2893, and also
10 excluding billing information concerning the person calling which
11 federal law or regulation requires a telephone corporation to
12 provide to the person called.

13 (2) The residential subscriber's credit or other personal
14 financial information, except when the corporation is ordered by
15 the commission to provide this information to any electrical, gas,
16 heat, telephone, telegraph, or water corporation, or centralized
17 credit check system, for the purpose of determining the
18 creditworthiness of new utility subscribers.

19 (3) The services which the residential subscriber purchases
20 from the corporation or from independent suppliers of information
21 services who use the corporation's telephone or telegraph line to
22 provide service to the residential subscriber.

23 (4) Demographic information about individual residential
24 subscribers, or aggregate information from which individual
25 identities and characteristics have not been removed.

26 (b) Any residential subscriber who gives his or her written
27 consent for the release of one or more of the categories of personal
28 information specified in subdivision (a) shall be informed by the
29 telephone or telegraph corporation regarding the identity of each
30 person or corporation to whom the information has been released,
31 upon written request. The corporation shall notify every
32 residential subscriber of the provisions of this subdivision
33 whenever consent is requested pursuant to this subdivision.

34 (c) Any residential subscriber who has, pursuant to subdivision
35 (b), given written consent for the release of one or more of the
36 categories of personal information specified in subdivision (a)
37 may rescind this consent upon submission of a written notice to the
38 telephone or telegraph corporation. The corporation shall cease to
39 make available any personal information about the subscriber,

1 within 30 days following receipt of notice given pursuant to this
2 subdivision.

3 (d) This section does not apply to any of the following:

4 (1) Information provided by residential subscribers for
5 inclusion in the corporation's directory of subscribers.

6 (2) Information customarily provided by the corporation
7 through directory assistance services.

8 (3) Postal ZIP Code information.

9 (4) Information provided under supervision of the commission
10 to a collection agency by the telephone corporation exclusively for
11 the collection of unpaid debts.

12 (5) Information provided to an emergency service agency
13 responding to a 911 telephone call or any other call communicating
14 an imminent threat to life or property.

15 (6) Information provided to a law enforcement agency in
16 response to lawful process.

17 (7) Information which is required by the commission pursuant
18 to its jurisdiction and control over telephone and telegraph
19 corporations.

20 (8) Information transmitted between telephone or telegraph
21 corporations pursuant to the furnishing of telephone service
22 between or within service areas.

23 (9) Information required to be provided by the corporation
24 pursuant to rules and orders of the commission or the Federal
25 Communications Commission regarding the provision over
26 telephone lines by parties other than the telephone and telegraph
27 corporations of telephone or information services.

28 (10) The name and address of the lifeline customers of a
29 telephone corporation provided by that telephone corporation to
30 a public utility for the sole purpose of low-income ratepayer
31 assistance outreach efforts. The telephone corporation receiving
32 the information request pursuant to this paragraph may charge the
33 requesting utility for the cost of the search and release of the
34 requested information. The commission, in its annual low-income
35 ratepayer assistance report, shall assess whether this information
36 has been helpful in the low-income ratepayer assistance outreach
37 efforts.

38 (11) *Information provided in response to a request pursuant to*
39 *subdivision (a) of Section 530.8 of the Penal Code.*

1 (e) Every violation is a grounds for a civil suit by the aggrieved
2 residential subscriber against the telephone or telegraph
3 corporation and its employees responsible for the violation.

4 (f) For purposes of this section, “access number” means a
5 telex, teletex, facsimile, computer modem, or any other code
6 which is used by a residential subscriber of a telephone or
7 telegraph corporation to direct a communication to another
8 subscriber of the same or another telephone or telegraph
9 corporation.

10 *SEC. 12.* No reimbursement is required by this act pursuant
11 to Section 6 of Article XIII B of the California Constitution
12 because the only costs that may be incurred by a local agency or
13 school district will be incurred because this act creates a new crime
14 or infraction, eliminates a crime or infraction, or changes the
15 penalty for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition of a
17 crime within the meaning of Section 6 of Article XIII B of the
18 California Constitution.

